



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 31st day of July, 1998

Served: August 4, 1998

Application of

**CONTINENTAL AIRLINES, INC.**

under 49 U.S.C. §§ 41108 and 41102 for a  
certificate of public convenience and necessity  
(Cleveland-London)

**Docket OST 96-1642**

Application of

**CONTINENTAL AIRLINES, INC.**

for designation (Cleveland, Ohio-London  
Gatwick)

**Undocketed**

Application of

**AMERICAN AIRLINES, INC.**

for designation (San Jose, California-London  
Gatwick)

**Docket OST 98-3765**

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, we propose to (1) restore the selection of Cleveland as a new U.S. gateway on U.S. Route 1; (2) renew Continental Airlines' certificate authority to provide combination services in the Cleveland-London (Gatwick) market; and (3) select American Airlines' San Jose-London (Gatwick) proposal as a backup to Continental's services.

**BACKGROUND**

Under the current United States-United Kingdom Air Services Agreement, U.S. carriers may provide service on U.S. Route 1 from various U.S. gateways to London. Under section 6 of Annex 1 to the Agreement, certain U.S. gateway selections on U.S. Route 1 may be moved to

alternative U.S. cities. By Order 98-2-20, the Department withdrew the gateway status of Cleveland and Ft. Lauderdale, which were not being used as U.S. gateways on Route 1, and named Charlotte as a new U.S. gateway, leaving one gateway opportunity available for new U.S.-London services.<sup>1</sup>

By letter dated February 26, 1998, Continental Airlines, Inc., requested that the Department designate Continental for Cleveland-London (Gatwick) scheduled combination service. Continental stated that it had firm plans to institute daily nonstop DC-10 service on April 30, 1999.<sup>2</sup>

Before taking action on Continental's request, by Notice dated April 3, 1998, we invited applications from other carriers interested in using the remaining opportunity to provide services to London (Gatwick) from a new U.S. gateway.

## **APPLICATIONS**

American Airlines, Inc., filed a competing application, proposing to provide daily nonstop service in the San Jose-London (Gatwick) market effective April 15, 1999, using 207-seat B-767-300ER aircraft. American states that San Jose is one of the largest cities in California, is a major center for air transportation, and is a gateway to Silicon Valley whose heavy demand for air service has transformed San Jose into an airport that can support nonstop service to London.

## **RESPONSIVE PLEADINGS**

Continental, American, and the City of San Jose filed answers.<sup>3</sup>

Continental argues that its Cleveland proposal should be selected over American's San Jose proposal because: (1) Cleveland generates three times the O&D London passengers that San Jose generates; (2) the service would introduce nonstop Cleveland-London service that has long been a shared goal of Continental and Cleveland; (3) Continental's proposal to offer Cleveland its only nonstop U.S.-Europe service would provide important public benefits to Cleveland and the points served through Continental's Cleveland hub; (4) both Cleveland-London and San Jose-London services would require flow traffic to support them, and Continental and Continental Express serve 64 cities at Cleveland while American serves only 5 U.S. cities and one foreign city at San Jose; (5) Continental's Cleveland proposal would offer effective intergateway competition and more significant route integration opportunities; and (6) American already operates to London from more U.S. gateways than any other airline in the U.S.-U.K. market and, thus, selection of Continental would offer greater competitive benefits in the U.S.-U.K. market.

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<sup>1</sup> Such services cannot currently be operated to London's Heathrow Airport, but they can be operated to London (Gatwick).

<sup>2</sup> Continental's certificate authority on Route 729 to operate Cleveland-London (Gatwick) services, granted by Order 96-12-25, expired January 26, 1998, but the carrier filed a timely renewal application in Docket OST-96-1642 and its certificate authority has been kept in force pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, pending action on its renewal application.

<sup>3</sup> We also received letters from Members of Congress and private individuals in support of the applications of Continental or American. These letters have been placed in the correspondence section of the appropriate docket.

American argues that San Jose should be selected over Cleveland because: (1) San Jose's catchment area has a far larger population base; (2) San Jose has greater potential to generate traffic in the local market; and (3) San Jose has stronger economic indicators. American also argues that while Cleveland would provide on-line connections for behind-Cleveland markets, almost all of those markets already have connecting service to London on Continental via Newark, or on Northwest (Continental's worldwide alliance partner) via the nearby Detroit gateway. Finally, American argues that, by operating from San Jose to London (Gatwick), it would offer improved service in the local market for the large percentage of the San Francisco Bay area's population that is more conveniently served via San Jose rather than by the services of United, British Airways, and Virgin Atlantic at the San Francisco airport. In addition, it argues that by its proposed service at Gatwick it would provide access to 43 points beyond London that are unavailable at London Heathrow airport.

The City of San Jose supports American's application.<sup>4</sup>

### **CONTINENTAL'S MOTION FOR EXPEDITION**

On June 15, 1998, Continental filed a motion for expedition, stating that it now has firm plans to institute nonstop Cleveland-London (Gatwick) nonstop service on February 19, 1999, and urging the Department to expedite consideration of its application so Continental would have time to secure appropriate slots at Gatwick for its proposed service. In conjunction with its new start-up date, Continental states that while it had originally proposed to institute service using DC-10 aircraft, they will not be available for use next February and it would develop the route using B-757 aircraft and substitute larger aircraft when demand justifies.

Answers to Continental's motion were filed by the City of Cleveland, and by American and the City of San Jose.

The City of Cleveland fully supports Continental's request for expedition and its request to restore the Cleveland-London designation.

American argues that the Department should promptly institute a carrier-selection case, but asserts that Continental's earlier start-up date is not significant enough to cause the Department to use different procedures than its normal carrier-selection procedures. American also notes that Continental now proposes to use a smaller aircraft and that because of Continental's change in aircraft, American's proposed service would provide 13 % more capacity than Continental's proposed service.

The City of San Jose echoes American's argument that the Department should promptly institute a carrier-selection proceeding.

### **DECISION**

We have tentatively decided to (1) restore the selection of Cleveland as a new U.S. gateway on U.S. Route 1; (2) renew Continental Airlines' certificate authority to provide combination

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<sup>4</sup> The City of San Jose also includes the San Jose International Airport.

services in the Cleveland-London (Gatwick) market; and (3) select American Airlines' San Jose-London (Gatwick) proposal as a backup to Continental's services.

Continental and American each would provide service to a new U.S. gateway and would operate on a daily basis. Moreover, both would begin service early next year and operate comparably-sized aircraft.<sup>5</sup> However, after a careful review of both proposals, we tentatively find that Continental's proposal to serve Cleveland would provide greater public benefits.

First, we tentatively find that Continental's proposed service would benefit more passengers in the local market. The record in this case shows that for the twelve months ended September 30, 1997, Cleveland generated some 29,260 local O&D passengers in the London market. That translates into approximately 80 passengers per day--or over three times more local O&D passengers per day than was generated in the same period by San Jose.<sup>6</sup> In addition, we tentatively find that Continental would provide benefits to a greater catchment pool behind the local market. Specifically, Continental would provide on-line connecting service to 64 cities that Continental or Continental Express serve over Continental's Cleveland hub.<sup>7</sup> While it is true, as American asserts, that most of Continental's Cleveland connecting cities have available connecting service to London at Newark, Continental's proposed Cleveland-London service would nevertheless offer these London passengers another travel option. Also, any catchment area benefits generated by Continental promise to exceed those generated by American, since American serves San Jose nonstop from only six U.S. cities--Boston, Chicago, Dallas/Ft. Worth, Los Angeles (by American Eagle), New York (effective August 1, 1998), and Austin. The first five are currently among American's seven gateways to London. The sixth, Austin, is well to the east of San Jose and has more convenient connecting service to London over American's Dallas/Ft. Worth or Chicago gateways. Furthermore, Continental's Cleveland-London services would provide valuable intergateway competition to the nonstop services to London available at Detroit (by Northwest) and Cincinnati (by Delta), thereby promoting competition in the U.S.-London market. In addition, American's proposal would effectively benefit only the local market.

Moreover, we tentatively find that the selection of Continental to serve the Cleveland-London (Gatwick) market would better advance our policies regarding market structure by better promoting competition in the U.S.-U.K. market. Currently, American serves London from seven U.S. gateways (Boston, Chicago, Dallas/Ft. Worth, Los Angeles, Miami, New York (JFK and Newark International), and Raleigh/Durham). No other U.S. carrier serves London from as many gateways. United serves from four gateways; Delta, Northwest and US Airways each serves from two. Similarly, Continental provides nonstop service to London from two gateways (Houston and Newark).

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<sup>5</sup> Although Continental now proposes to begin service in mid-February 1999, while American would begin in mid-April, we tentatively do not find the two-month difference in proposed startup dates to be decisional in the circumstances presented. Similarly, while American would operate a slightly larger aircraft than would Continental (207 seats versus 183 seats), we again tentatively do not find the difference to be decisional taking into account all the elements of record, including Continental's stated readiness to substitute larger DC-10 aircraft as the market develops.

<sup>6</sup> American's April 27, 1998, Answer at 3.

<sup>7</sup> Continental's April 27, 1998, Answer at 3.

In arguing for San Jose's selection, American relies primarily on San Jose's location in the San Francisco Bay area and on the large traffic base of that area. In this connection, American estimates that San Jose's share of the San Francisco Bay area's London traffic base to be approximately 69,500 annual O&D passengers. What we tentatively find more critical in our carrier selection analysis, however, is that the San Jose airport is only 30 miles from the San Francisco airport, a gateway already enjoying daily nonstop service to London by one U.S. carrier, United, as well as two foreign-flag carriers, British Airways and Virgin Atlantic. This close proximity of existing and substantial nonstop service at San Francisco reduces, in our tentative view, the public benefits of naming San Jose as the one remaining new U.S. gateway to London in a selection proceeding where the only other potential gateway point now enjoys no nonstop London service at all and has no existing London gateway in comparable proximity.

In these circumstances, and taking into consideration the service and intergateway competitive benefits of Continental's proposal, as discussed above, we tentatively conclude that the selection of Continental would promote greater competition in the U.S.-London market than would the selection of American.

Finally, we are not persuaded by the arguments of American and San Jose that further evidentiary procedures are necessary before we issue a decision in this case. Both carriers have presented full descriptions of their proposed services and arguments in support of their proposals. In addition, all parties have had a full opportunity to comment on each applicant's proposal. We perceive no unresolved issues of relevant fact that would benefit from further evidentiary procedures. Given the information and arguments presented, we find that the record is adequate to proceed to a tentative decision in this case.

### **CERTIFICATE AND STARTUP CONDITIONS**

If the selection of Continental is made final, we propose to renew its five-year experimental certificate of public convenience and necessity for service in the Cleveland-London (Gatwick) market. We have tentatively decided to require institution of service within 90 days of the carrier's proposed startup date of February 19, 1999.

### **BACKUP AWARD**

We have tentatively decided to select American's San Jose-London (Gatwick) proposal as a backup to Continental's Cleveland-London (Gatwick) services. Selection of American for backup will ensure that should Continental not inaugurate service, American would be authorized to enter the market without further regulatory proceedings. While we have tentatively selected Continental's proposal for Cleveland over American's proposal for San Jose, the record of this case shows that American's proposal would also provide public benefits. As American currently serves both San Jose and London (Gatwick), it would be in a position to commence its proposed San Jose-London (Gatwick) services should Continental not inaugurate its Cleveland services.

### **ACCORDINGLY,**

1. We tentatively grant the application of Continental Airlines, Inc., in Docket OST-96-1642 to renew its authority on Route 729 to provide scheduled foreign air transportation of persons, property, and mail in the Cleveland-London (Gatwick) market;

2. We tentatively select Cleveland, Ohio, as a new U.S. gateway under section 6 of Annex 1 to the current United States-United Kingdom Air Services Agreement;
3. We tentatively select American Airlines, Inc., for backup authority to provide scheduled foreign combination air services in the San Jose-London (Gatwick) market;
4. We direct all interested parties having objections to our tentative decisions set forth in this ordering and in ordering paragraphs 1 through 3, above, to file their objections with the Department's Docket Section (Dockets OST-96-1642 and OST-98-3765), U.S. Department of Transportation, 400 Seventh Street, N.W., Room PL-401, Washington, D.C. 20590 no later than seven calendar of the date of service of this order, answers thereto shall be filed no later than 5 calendar days thereafter;<sup>8</sup>
5. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;<sup>9</sup>
6. If no objections are filed, we will deem all further procedural steps to have been waived, and proceed to enter a final order subject to presidential review under section 41307 Subtitle VII of Title 49, the United States Code (Transportation);
7. We dismiss the motion of Continental Airlines, Inc., for expedition; and
8. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; the City of Cleveland, Ohio; the City of San Jose, California, and the San Jose International Airport; the Ambassador of the United Kingdom of Great Britain and Northern Ireland in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

**PATRICK V. MURPHY**

Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation.html>.*

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<sup>8</sup> The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system.

<sup>9</sup> As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.